IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

JUDGMENT

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 962/2007.
In
S.B. CIVIL WRIT PETITION NO. 7745/2005.

Rishi Lal
Vs.
The Civil Judge (Junior Division) & Judicial Magistrate No. 1 Alwar and ors.

Date of Order:- September 11, 2007.

PRESENT
HON'BLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Dr. (Mrs.) Swati Bhati for the appellant.

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BY THE COURT:- (Per J.M. Panchal, Actg. CJ)

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The instant appeal is directed against the order dated July 20, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition No. 7745/2005 by which prayer made by the appellant to set-aside the order dated July 26, 2005 passed by the trial court permitting the respondents to amend the plaint, is refused.

2) The suit was filed by Prem Narayan for eviction against the appellant on the ground of his personal bonafide requirement and material alteration made by the appellant in the suit

premises without his permission. During the pendency of the suit, Prem Narayan who had filed the suit expired. Therefore, respondents No.2/1 to 2/5 who are his heirs and legal representatives are impleaded as parties to the suit. They filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 permitting them to amend the suit. By the amendment, they wanted possession of the suit premises on the ground of personal and bonafide requirement of respondent No.2/2. The learned Judge allowed the same vide order dated July 26, 2005. Feeling aggrieved, the appellant invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition No.7745/2005. The learned Single Judge has dismissed the writ petition vide order dated July 20, 2006 giving rise to the instant appeal.

3) This Court has heard the learned counsel for the appellant and considered the documents forming part of the writ petition.

4)

4) The plea that amendment as prayed will change cause of action as well as nature of the suit filed by the deceased and, therefore, the petition filed by the appellant should have been accepted by the learned Single Judge, cannot be accepted. The suit was filed for possession of the suit property and by the amendment, nature of the suit is not changed at all.

5) Having regard to the facts of the case, this Court is of the opinion that in order to avoid multiplicity of proceedings, the amendment was necessary which is granted by the trial court. The discretion exercised under Order 6 Rule 17 of the CPC cannot be said to be arbitrary or erroneous so as to warrant interference by this Court in the instant appeal.

6) The appeal lacks merit therefore, it deserves to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ), J. (J.M. PANCHAL), Actg. CJ.

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